

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of	)	
	)	DISMISSAL AND
MUR 6814	)	CASE CLOSURE UNDER THE
Erin Bilbray-Kohn	)	ENFORCEMENT PRIORITY
Erin Bilbray for Congress	)	SYSTEM
and William Stanley, as treasurer	)	CELA
	)	

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6814 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office.<sup>1</sup> For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegations that Erin Bilbray for Congress and William Stanley, in his official capacity as treasurer, (the "Committee")<sup>2</sup> violated the Act or Commission regulations, and find no reason to believe that

<sup>1</sup> Complaint Filed: May 2, 2014. Response from Erin Bilbray-Kohn and Erin Bilbray for Congress Filed: August 8, 2014.

<sup>2</sup> Erin Bilbray-Kohn was a 2014 candidate for Nevada's 3rd Congressional District seat. Erin Bilbray for Congress was the principal campaign committee for Bilbray-Kohn's campaign. On September 9, 2014, William Stanley mailed a letter to the Committee and the Commission stating his desire to resign as treasurer of the Committee. *See Stanley Resp. at 1.* To date, reports filed by the Committee have continued to bear Stanley's electronic signature as treasurer, and the Committee has not amended its Statement of Organization to reflect any change in treasurer.

1 candidate Erin Bilbray-Kohn violated the Act or Commission regulations.

2 In this matter, Complainant Chuck Muth alleges that Erin Bilbray-Kohn, and her principal  
3 campaign committee, Erin Bilbray for Congress, sent an email to prospective donors on March 11,  
4 2014, but failed to include proper disclaimers on the emails. Compl. at 1. The Complaint included a  
5 copy of the email at issue, which contained the word "disclaimer" and included the Committee's  
6 name and mailing address, but did not include a box referencing who paid for and authorized the  
7 correspondence. *Id.* at 3-4.

8 Respondents claim that the email clearly identified Ms. Bilbray's authorized committee, Erin  
9 Bilbray for Congress, as the sponsor, and that "a footer at the end of the email read: {Disclaimer}  
10 Erin Bilbray for Congress, 9101 West Sahara Avenue, Suite 105-B20, Las Vegas, Nevada 89117."  
11 Committee Resp. at 1. The Respondents note that "by including a footer that read 'Disclaimer,'  
12 followed by the name and address of the campaign, the email correctly identified the campaign as  
13 the entity paying for it," and that "no reasonable person could have understood the disclaimer to  
14 mean otherwise." *Id.* at 2.

15 A political committee that makes an expenditure for a public communication must include a  
16 disclaimer stating that the Committee paid for and authorized the communication. 52 U.S.C.  
17 § 30120(a); *see also* 11 C.F.R. § 110.11(a)(1) and (b)(1). Additionally, political committees that  
18 send more than 500 substantially similar communications by e-mail must include disclaimers in the  
19 communications. 11 C.F.R. § 110.11(a)(1). The Commission has established specifications for the  
20 content and appearance of all disclaimers. *See* 11 C.F.R. § 110.11(b)-(c). Disclaimers must be  
21 presented in a clear and conspicuous manner, to give the reader adequate notice of the identity of the  
22 person or committee that paid for and authorized the communication. 11 C.F.R. § 110.11(c)(1).  
23 Also, communications paid for and authorized by a candidate's authorized committee must clearly  
24 state that the committee paid for it. 11 C.F.R. § 110.11(b)(1).

1           It appears that the Committee failed to include appropriate disclaimers on its March 11th  
2 email by not including a statement that the communication was authorized and paid for by the  
3 Committee. However, the communication contained information identifying it as a communication  
4 from the Bilbray campaign and, therefore, was unlikely to have misled the public recipients due to  
5 the identifying information included in the email.<sup>3</sup>

6           In light of the likelihood that the public was not misled, the technical nature of the violation,  
7 and in furtherance of the Commission's priorities relative to other matters pending on the  
8 Enforcement docket, the Office of General Counsel believes that the Commission should find no  
9 reason to believe that Erin Bilbray-Kohn violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(1)  
10 and (b)(1), and exercise its prosecutorial discretion and dismiss the allegation that Erin Bilbray for  
11 Congress and William Stanley, in his official capacity as treasurer, violated 52 U.S.C. § 30120(a)  
12 and 11 C.F.R. § 110.11(a)(1) and (b)(1), pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). The  
13 Office of General Counsel also recommends that the Commission approve the attached Factual and  
14 Legal Analysis and the appropriate letters, and close the file.

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<sup>3</sup>           The Commission has previously dismissed several disclaimer matters on a similar basis. *See* MURs 6799 and 6842 (Frank Scaturro for Congress), the Commission exercised its prosecutorial discretion to dismiss allegations that Frank Scaturro for Congress failed to include a disclaimer on certain communications, including emails distributed by the committee; *see also* MUR 6438 (Arthur B. Robinson), the Commission exercised its prosecutorial discretion to dismiss an allegation that Robinson's campaign did not comply with the disclaimer requirements for various emails sent by the Committee's treasurer; *see also* MUR 6270 (Rand Paul Committee), the Commission exercised its prosecutorial discretion to dismiss an allegation that the Rand Paul Committee failed to include a disclaimer on certain communications, including an email signed by its political director.

**RECOMMENDATIONS**

1. Find no reason to believe that Erin Bilbray-Kohn violated 52 U.S.C. § 30120(a), 11 C.F.R. § 110.11(a)(1) and (b)(1);
2. Dismiss the allegation that Erin Bilbray for Congress and William Stanley in his official capacity as treasurer violated 52 U.S.C. § 30120(a), 11 C.F.R. § 110.11(a)(1) and (b)(1);
3. Approve the attached Factual and Legal Analysis and the appropriate letters; and
4. Close the file.

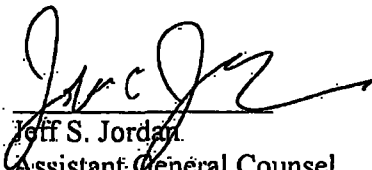
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3/3/16

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